In the High Court of Punjab & Haryana at Chandigarh.

1. Regular Second Appeal No.2001 of 1988.
Smt. Badami vs Bhali.

2. Regular Second Appeal No.2002 of 1988.
Smt.Badami vs Bhali

Date of Decision : 1st September, 2006.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Alok Jain,Advocate,for the appellant.
Mr.C.B.Goel, Mr.Nitin Jain, Mr.Manoj Sharma,Advocates,
for the respondent.

Judgment.

Kiran Anand Lall, J.

These are two regular second appeals filed by the appellant-defendant, Badami, against the judgment and decree dated 28.7.1988 of the first appellate court vide which her appeals no.19/13 of 1987 and 18/13 of 1986 were dismissed, by a common judgment. In appeal no.19/13 of 1987, she had challenged the judgment and decree dated 17.12.1985 of Civil Suit no.401 of 1984 holding Bhali respondent-plaintiff as owner of the suit land on the basis of an earlier judgment and decree dated 27.11.1973 and restraining the appellant from alienating the land, by way of sale, mortgage, lease, gift, or in any manner, and in appeal no.18/13 of 1986 she agitated the correctness of judgment and decree dated 15.2.1986 vide which trial court had decreed the suit of respondent-plaintiff for possession of the land, against her.

In Suit No.401 of 1984, the claim of respondent-plaintiff pertained to the ownership of land, on the basis of a consent decree dated 27.11.1973 suffered by the appellant-defendant, in his favour, in an earlier suit no.1422 of 1973 titled *Bhali vs. Badami*. His case was that since entries

in the revenue record were not changed in his name, on the basis of decree dated 27.11.1973, the appellant-defendant was threatening to alienate the land, by taking undue advantage of the (wrong) entries in her name. The appellant-defendant, on the other hand, denied having suffered any such decree. She, however, pleaded that, about 11 years back, the respondent-plaintiff had brought her to Kaithal and obtained her thumb-impressions on 2-3 papers, after telling her that government was in the process of enacting a law for reducing the surplus area (of 10 standard acres) and, in order to save her land from being taken away as surplus, she should execute a lease-deed in respect of the suit land in his favour, simply as a paper transaction, and possession of land would continue to remain with her. After reaching Kaithal, the respondent-plaintiff told her that the Sub-Registrar was not available on that day and as such, she would have to come again (to Kaithal), after three days, for the registration of lease-deed. Her further case was that she was a pardanashin lady and, therefore, was not aware of as to what was being done. It was only after the filing of suit for permanent injunction against her, that she came to know that instead of lease-deed, the respondent-plaintiff had played a fraud on her and made her suffer a consent decree, in his favour. She also claimed that the suit land continued to remain in her possession. Her case was that the consent decree which had been fraudlently obtained by the respondent-plaintiff, was not binding on her. In the second suit bearing No.784 of 1984, the respondent-plaintiff claimed possession of the land, on the ground that appellant- defendant was in its permissive possession. The appellant- defendant contested it, pleading that the respondent- plaintiff was not the owner of land, and had, therefore, no right to claim its possession. It was also pleaded that she was in

possession of the land, in her own right as owner. Maintainability of the suit in the form it was filed was challenged and so was valuation of the property for the purpose of court fee. The suit was alleged to be time barred and also liable to be stayed under Section 10 CPC. Plea of estopple was also put forward. Following issues were framed in the two suits:-

Suit No.401 of 1984.

1. Whether the plaintiff is the owner of the suit property?OPP
2. Whether the impugned decree dated 27.11.73 is null, void and is not binding on the rights of the defendant as alleged?OPD
3. Whether the suit is not properly valued for the purpose of court fee and jurisdiction?OPD
4. Relief.

Suit No.784 of 1984.

1. Whether the plaintiff is the owner of the suit property?OPP
2. Whether the suit is liable to be stayed under section 10 of CPC as alleged?OPD
3. Whether the plaintiff is estopped to file the present suit by way of his own act and conduct?OPD
4. Whether the suit is time barred? OPD
5. Whether the suit is not maintainable and malafide one? OPD
6. Whether the civil court decree dated 27.11.1973 passed in civil suit No.427 of 1973 is illegal, null, void, result of fraud and liable to be set aside as alleged? OPD
7. Whether the suit is not properly valued for the purposes of court fee and

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jurisdiction?OPD

8. Relief.

The first suit was decreed, after considering the evidence led by the parties. In the second suit, evidence was led by the respondent-plaintiff only. The appellant-defendant, however, did not lead any evidence though sufficient opportunities were granted to her. The court, therefore, closed her evidence and decreed the suit, on the basis of evidence led by the respondent-plaintiff. The first appellate court upheld the verdict of trial court, in both the suits. The appellant-defendant, thereafter, came up in regular second appeals no. 2001 and 2002 of 1988, against the judgments and decrees of the first appellate court passed in civil appeals no.19/13 of 1987 and 18/13 of 1986 respectively.

Needless to say that since these are regular second appeals, these can be heard only on a substantial question (s) of law, and not on any other point. However, no such question has been placed on record, by the learned counsel for the appellant, and rightly so, as none arises in these appeals. But, during arguments, the learned counsel stated that substantial question of law involved in the appeals is “as to whether the courts below had rightly upheld the validity of the decree dated 27.11.1973 while recording finding in this regard, under issue no.2 in Civil Suit No.401 of 1984 and issue No.6 in Civil Suit No.784 of 1984.”

I am, however, not in agreement with the learned counsel. The concurrent finding of the trial court and the first appellate court holding the decree dated 27.11.1973 as valid, is a pure and simple question of fact, in the circumstances of the case. But, since the counsel for the parties addressed this court on the point of validity of the decree dated 27.11.1973,

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I would like to deal with this point. The onus of proving the fraudulent character of decree dated 27.11.1973 was on Badami appellant. But, she had miserably failed to discharge it. The only evidence led to discharge this heavy onus was her own solitary statement, as DW1, in which she stated that the respondent- plaintiff brought her from the village, on the pretext of getting a lease-deed registered but obtained her thumb impressions on papers, without disclosing their contents, and she never appeared, or made any statement, before any officer. As against this, the respondent- plaintiff examined Shri R.K.Gaur, Advocate, in the witness-box (as PW2), and this witness proved the written statement filed by Badami appellant, through him, in the earlier suit. He testified that the written statement, certified copy Ex.P5, was drafted by him, at the instance of Badami appellant and she had put her thumb-impressions thereon, after its contents were read over to her and she had accepted the same to be correct. Besides, Ex.P6 is the certified copy of oral statement made by her in court, wherein she admitted the claim of respondent- plaintiff, as set up in the plaint (of that suit), certified copy Ex.P3. It was on the basis of her written statement and the oral statement made in court that the court, later, passed the decree, copy Ex.P1, regarding the respondent (plaintiff- therein) being owner of the suit land.

One Dai Ram, as it is in evidence, had two sons, Rehna and Dhinda. The respondent-plaintiff is the son of Ram Chand son of Rehna, while the appellant-defendant is widow of Rura son of Dhinda. Both, Rehna and Dhinda, and their sons, Ram Chand and Rura,had expired. And, it is in the statement of Badami appellant (as DW1) that except the respondent-plaintiff, no other relation from the family of her in-laws was alive when the decree dated 27.11.1973 was passed, in favour of the respondent- plaintiff.

It is a matter of common knowledge and it also finds mention in para no.17 of the trial court judgment that there is a tendency in agricultural tribes (to which the parties belong) that property should be inherited by a male member. The respondent- plaintiff, it may be reiterated, was the only living nearest collateral of the appellant- defendant. As such, her conduct in giving the land to him, by suffering the consent decree in his favour, on the basis of a family settlement which had earlier been arrived at between them, was quite natural.

The version of appellant- defendant that she is an illiterate paradanashin lady and respondent-plaintiff took advantage of this fact by procuring her thumb impressions on papers, without disclosing their contents, was rightly discarded by the courts below. She, as per her own testimony (as DW1), had been looking after her land, herself, and even the collection of “batai” of land, used to be done, by her. She also deposed that she had been keeping accounts of her servants, and entries in that behalf used to be made in “bahi”. The extent of her vigilance and self-confidence can be imagined from her categorical statement that in family matters or in business, she never accepted advice of, even her son-in-law (what to talk of others). Such a person, it is unimaginable, would put his/ her thumb-impressions on papers of which contents were not known to him/her, as was the case set up by the appellant-defendant. The conclusion drawn by both courts, on the basis of these facts, was that she was intelligent enough, to manage her affairs, and it could not, therefore, be expected that such type of vigilant and alert lady would have put her thumb impressions on documents, without knowing their contents. As stated above, her statement was recorded, in court also, in Civil Suit No.1422 of 1973, and a perusal of this

statement, certified copy Ex.P6, shows that her counsel, Shri R.K.Gaur, Advocate (PW2) had duly identified her in court when she made it. Another significant fact to be taken note of is that while appearing as DW1, she could not dare to dispute that she had appeared in court and filed written statement besides making oral statement admitting the claim of respondent-herein with regard to his ownership qua the suit land.

According to the learned counsel for the appellant, there was no reason for which the appellant would have deprived her daughter and son-in-law of her inheritance by suffering the decree dated 27.11.1973 in favour of the respondent- plaintiff. He contended that her daughter and son-in-law were residing with her and also looking after her. Learned counsel for the respondent pointed out that the decree was passed in the year 1973 and till that time and even thereafter, she had been living alone and was being cared for by the respondent. It was only, at some later stage, that her daughter and son-in-law shifted to the village and started residing with her. Prior to that, she was being served by the respondent, as stated by the latter as PW3. It is also in the statement of the respondent- plaintiff that there is only a small wall, four feet high, in between his house and that of the appellant-defendant. This fact makes the version of respondent-plaintiff that it was he who used to look after the appellant-defendant, who was living alone in the house, adjacent to his house, and, therefore, she gave her land, vide the consent decree, to him who was the nearest surviving collateral from the family of her husband, appears to be quite plausible. It appears from the evidence on record that relations between two families had been very cordial, earlier. When the father of the respondent was alive, as stated by the respondent (as PW), it was he who used to look after the appellant-

defendant who had become widow at a very young age, when her daughter (only child) was hardly two years old.

The fact that the land was not mutated in revenue records, on the basis of decree, is, to my mind, explainable, on the only hypothesis that due to extreme cordiality that existed between the families of the parties, the respondent, somehow, did not think on those lines. Be that as it may, the fact remains that he had become owner of the land on the basis of the decree suffered by the appellant-defendant, in the year 1973, in his favour. The mere fact that the land was not mutated in revenue records, in his name, could not deprive him of the ownership of land.

The concurrent finding of courts below about the respondent-plaintiff having become owner of the suit land, by virtue of the consent decree dated 27.11.1973, and as such being entitled to get its possession from the appellant-defendant, cannot, thus, be faulted on any score. Both appeals shall, accordingly, stand dismissed, leaving parties to bear their own costs.

1st September, 2006. (Kiran Anand Lall)
vs. Judge.